

# HOUSING TAX CREDIT PROGRAM

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## I. INTRODUCTION

The Federal Tax Reform Act of 1986 created the Housing Tax Credit (HTC) Program (see Section 42 of the Internal Revenue Code) for qualified residential rental properties. The HTC offers a reduction in tax liability to owners and investors in eligible low-income rental housing projects involving new construction, substantial rehabilitation, or acquisition with substantial rehabilitation.

The Minnesota Housing Finance Agency (MHFA) has been designated by the Minnesota Legislature as the primary allocating Agency of HTC in Minnesota. Qualified local cities and counties have also been designated by the Legislature as suballocators of the HTCs.

Section 42 of the Internal Revenue Code ("Section 42") requires that tax credit allocating agencies develop an allocation plan for the distribution of the tax credits within the jurisdiction of the allocating agency. The MHFA Qualified Allocation Plan (QAP) (Attachment 1) combines state and federally legislated priorities with other priorities established by the MHFA following receipt of comments from the public, local municipalities and federal agencies. The QAP is subject to modification or amendment to ensure the provisions conform to the changing requirements of the Section 42 and the applicable state statute.

Several changes to Section 42 of the Internal Revenue Code were included in legislation passed by Congress in December 2000 as part of the Community Renewal Tax Relief Act of 2000. No guidance has been issued by the IRS with respect to these changes. However, no assurances can be given that IRS guidance will not require further adjustments to the QAP and additional review of selected developments.

The MHFA is also required to monitor HTC projects during the Compliance Period as well as notify the Internal Revenue Service (IRS) of any noncompliance with the requirements of Section 42 of which it becomes aware. All applicants should review the IRS Rules for Monitoring Compliance (Attachment 8). In addition, the MHFA will monitor the projects during the remaining term of the Declaration of Land Use Restrictive Covenants (Declaration).

This information summarizing the HTC program is provided as a brief overview. It is not comprehensive and should not be relied upon for income tax purposes. The tax credits are allocated to the owner (taxpayer). The owner is solely responsible for compliance with Section 42.

The MHFA is under no obligation to undertake an investigation of the accuracy of the information submitted in an application. MHFA's review of a proposed housing project does not constitute a warranty of the accuracy of the information, nor of the quality or marketability of the housing to be purchased, constructed, or rehabilitated pursuant to the HTC program. Developers, potential investors and interested parties should undertake their own independent evaluation of the feasibility, suitability and risk of the project. If any information submitted by the applicant in connection with the allocation of HTCs by the MHFA is later found to have been incorrect or there has been a subsequent change in any material respect, it is the responsibility of the applicant to inform the MHFA and to request a reexamination of the application.

This manual is provided solely for use in applying for the housing tax credits from MHFA and may not be relied upon in structuring or investing in specific transactions, compliance with the Internal Revenue Code, Treasury Regulations or any other laws or regulations governing Tax Credits. Interested parties should consult with a knowledgeable tax professional prior to entering into any commitment concerning the use and claim of housing tax credits.

## **II. MHFA MISSION STATEMENT**

We are committed to meeting Minnesotan's needs for decent, safe, affordable homes and stronger communities.

The mission of the MHFA Multifamily Division is to preserve and provide decent and affordable rental housing and stronger communities for low and moderate income households by providing underwriting, technical, management, marketing, social service and housing related expertise in the development and administration of multifamily housing.

### III. ROLE OF THE SUBALLOCATORS

Suballocators were authorized by the 1990 legislature to allocate and monitor tax credits to eligible projects in their cities or counties. The suballocators award their allotted tax credits in Round 1 of competition. During Round 1, for profit applicants must apply directly to the suballocator for a credit allocation if the project falls within a suballocators jurisdiction. Nonprofit applicants may apply to the MHFA non-profit set aside or the suballocator individually or concurrently. Any unused tax credits are returned to the MHFA prior to Round 2. In Round 2, projects located in suballocator jurisdictions may apply directly to the MHFA. In Round 2, where partially funded projects receive priority, a suballocator may recommend one partially funded project for additional tax credits.

Starting in 1999, a suballocator may elect to enter into a Joint Powers Agreement with MHFA under which MHFA shall perform certain functions related to the credit allocation and compliance monitoring in exchange for the apportionment of the suballocators tax credits to the MHFA.

## IV. POLICIES AND PROCEDURES

### A. Application Cycle

The Minnesota Housing Finance Agency allocation procedure for housing tax credits has two annual funding cycle processes.

Forward selection and reservation of credits (Round 1) will take place in the fall of the year preceding the allocation year.

Round 2 will offer for allocation, credit authority remaining or returned since Round 1. Additionally, Round 2 will establish a waiting list for credits that may be returned by projects that are not able to complete carryover requirements by November 1st of the allocation year.

MHFA will accept applications in accordance with the QAP attached as Attachment 1. The closing date for receipt of applications for each competition can be found in Section X: Critical Dates. (Application closing dates subsequent to the first competition may be approximate depending upon availability of tax credits and ability of MHFA to process applications).

The MHFA will base its selection decision upon the application and attachments received on the application due date.

If the application and all required attachments are not legible and complete, the application will be returned. No applications, attachments or documentation will be accepted after the application due date unless requested by the MHFA.

The preferred application method is electronic. Applications will not be accepted by facsimile.

Application should be submitted no later than 5:00 p.m. on the application date to:

Minnesota Housing Finance Agency  
Multifamily Development  
Housing Tax Credit Program  
400 Sibley Street, Suite 300  
St. Paul, MN 55101-1998

Individuals on the HTC interested parties mailing list will automatically receive notification of the submission dates.

Upon receipt of an application, as required by federal law, MHFA will notify the Chief Executive Officer of the local jurisdiction where the proposed project is planned. This notification will include characteristics of the proposed HTC project and provide an opportunity for the local unit of government to comment on the project. The MHFA will also notify the local public housing authority, City Administrator, and the suballocator.

Information submitted in an application for Housing Tax Credits is public information that is accessible to the public pursuant to Minnesota Statutes, Chapter 13.

## **B. Multiple Buildings**

Projects may include “multiple buildings” having similarly constructed housing units, provided the buildings are located on the same tract of land, are owned by the same person for Federal income tax purposes and are financed pursuant to a common plan of financing. Scattered site buildings on different tracts of land will also qualify if the project meets all of the other requirements described above and the project is 100 percent rent restricted.

## **C. Nonprofit Set Aside**

Federal law requires that 10 percent of the total annual credit available be reserved each year exclusively for projects involving ownership by nonprofit organizations which have a 501(c)(3) or (c)(4) designation. The MHFA and suballocators may reserve an additional 5 percent for a total annual nonprofit set aside of 15 percent. The nonprofit must be local, organized and incorporated in the state of Minnesota, have significant experience in Minnesota as a sponsor, owner, or manager of low income housing. The nonprofit must have as one of its exempt purposes the fostering of low-income housing and must materially participate in the ownership, development and operation of the low-income project throughout the term of the Declaration.

The intent of Section 42 is to ensure that a for profit entity or individual does not set up a “sham” nonprofit in order to tap the nonprofit set aside. This could include establishing a nonprofit for the specific project, without any history, experience, local community involvement, or financial strength.

The nonprofit organization must demonstrate, that the nonprofit is acting independently and free from influence or control of the for profit project team members. MHFA reserves the right to contact the officers and directors of the nonprofit organization to determine their independence.

MHFA will require that all nonprofits applying for the nonprofit set aside, and/or nonprofit application fee, disclose all identity of interest between the nonprofit and any member of the for-profit project team. An identity of interest would include any officer, director, partner, stockholder, relative, seller or owner of land or building involved, processing agent, real estate salesperson or broker, employee, or anyone acting to represent any for profit member of the project team who controls or influences the decisions of the nonprofit.

If there is an identity of interest, affiliation or conflict, as determined by MHFA, the MHFA will disqualify the nonprofit from receiving credits from the nonprofit set aside and/or applying under the reduced nonprofit application fee. In making this determination, MHFA will consider the following:

1. The nonprofit’s history, funding sources and composition of its board;
2. Past experience and anticipated future activities of the nonprofit, including involvement in the local community;
3. Sources and manner of funding of the nonprofit;
4. The nonprofit’s degree of financial strength for completion and operation of the project during the term of the Declaration;

5. The relationship of the principals involved in the formation of the nonprofit organization with for-profit individuals concerning the tax credit application. A nonprofit cannot be affiliated with or controlled by a for-profit entity by:
  - a. Having more than a 25 percent share of common board members; or
  - b. Having more than 25 percent of its funding, directly or indirectly, from the parent entity; or
  - c. Having any other type of association that is not considered an arms length affiliation.
6. The extent to which the nonprofit materially participates within the meaning of Section 469(h) of the Internal Revenue Code in the development and operation of the project throughout the term of the Declaration. MHFA will also look at the nonprofit's involvement in the project related construction, management, ownership interest, sharing of fees and funding provisions.

If the nonprofit set aside is exhausted during a round, the nonprofit applicant in the MHFA's jurisdiction may be eligible for tax credits from the appropriate for-profit set-aside and selected based upon its point ranking. (See also Article 4 of the QAP.)

#### **D. Rural Development/Small Project Set-Aside**

Eligible projects must have either:

- A Rural Development (RD) financing commitment or,
- A site located in a RD service area (Attachment 18) and consisting of twelve (12) or less units.

All projects within this set aside must meet all applicable HTC Design Requirements. First priority will go to projects with financing commitments from Rural Development. A developer may have a maximum award of two (2) projects within this set aside each allocation year. Once a project has elected to participate in this set aside, the project may not be transferred to an alternative set aside in the existing round.

#### **E. Developer and Development Limits**

During the allocation year, no more than 10 percent of the State's per capita volume limit in tax credits may be awarded to any one developer or general partner. No more than \$350,000 in cumulative tax credits may be awarded to any one project.

At the sole discretion of the MHFA, these limits may be waived for project that involve community revitalization, historical preservation, preservation of existing federally assisted housing, housing with rents affordable to households at or below 30 percent of median income or in response to significant proposed expansions in area employment or natural disaster recovery efforts. The MHFA may also waive these limits during Round 2 if there are excess tax credits at year end.

Applicants should not assume that this waiver will be automatically provided or rely on this statement when determining the scope of the proposed project.



## **F. Unacceptable Practices**

### **1. Transfer of Ownership:**

The MHFA strongly discourages the transfer of ownership in projects that have been awarded tax credits. The Agency feels that for the long term viability of quality housing, the development and management teams making the decisions in developing the tax credit housing need to also own and operate the project for the long term. Any transfer of title of a selected project or transfer of more than a 50 percent interest in a general partner or change in a nonprofit partner prior to a date five years after the project's new construction/rehabilitation element has been placed in service will be considered a material change in the project and will be subject to the approval of the MHFA. Sponsors wishing to change or transfer ownership must submit a revised application along with a completed and executed Notice of Intent to Transfer Ownership or Change in Owner Name or Status (HTC 27, Attachment 23) and Transfer Agreement (HTC 20, Attachment 23), a transfer of ownership fee, (See Section X) and any other documentation that MHFA deems necessary.

Any unapproved change or transfer of ownership from selection through five years after the above cited placed in service date will have an effect on all individuals/entities that wish to submit applications in future HTC rounds. Each and every member of the development and management team on each side of the transfer will be penalized as follows;

At the application stage for the year the transfer took place and one year after:

- a. First Transfer (-10 points on each submittal)
- b. Two or More Transfers (-25 points on each submittal)

In addition, if the MHFA becomes aware of a transfer of ownership by an individual or entity without proper notification and approval by the MHFA, the MHFA reserves the right to determine that all parties involved in the transfer will not be eligible for participation in Minnesota's HTC program for a period of ten years.

### **2. Displacement of Section 8 Tenants:**

MHFA will not accept applications that have displaced (or will displace) Section 8 tenants in a housing project because rents will be increased above the Section 8 Existing Fair Market Rent limit. Rehabilitation projects that have existing Section 8 tenants may not increase those rents (in Section 8 units only) above HUD's Fair Market Rents after completion of rehabilitation.

MHFA has agreed to partner with the local HUD area office to determine if tenants of rehabilitation projects;

- a. were displaced prior to application;
- b. are displaced after rehabilitation has been completed.

If MHFA and the local HUD area office agree that intentional displacement of Section 8 tenants has occurred, with exception given to lease violations by the tenant, the MHFA will:

- a. recapture any tax credits to a project prior to 8609;

- b. impose a 25 point penalty to all parties involved in ownership/management of the project for future tax credits. The penalty points will remain in place for two years and may also be placed against tax exempt tax credit projects, owners, and managers.

3. Changes to Project:

The award of tax credits is based upon information provided in the application and the preliminary plans submitted with the application. Until the property is placed in service, any material changes to the project or building design (i.e., changes in unit mix or unit size, that affect applicable Design Standards, or Design Features required for preference points (Attachment 3)) as submitted in the application require written notification to and approval from MHFA. Any changes that have not been previously approved by the MHFA could result in a proportional loss of tax credits up to the full amount of the allocation as well as the assessment of penalty points to the owner/developer of up to 25 points.

4. Late 8609 Application Submissions and/or Filing of Non-Agency Approved 8609 with the IRS.

When MHFA becomes aware that a late submission of a complete and acceptable 8609 application package by a development's owner/agent results in the loss of any volume of housing tax credit authority to the state of Minnesota, MHFA reserves the right to determine that all parties involved will not be eligible for future participation in Minnesota's HTC Program for a period of ten years.

When MHFA becomes aware that a development's owner/agent has filed a self-prepared 8609 with the Internal Revenue Service, MHFA will file an 8823 Notice of Non-Compliance with the IRS and reserves the right to determine that all parties involved will not be eligible for future participation in Minnesota's HTC Program for a period of ten years. This applies to credits issued by MHFA, suballocators and in conjunction with tax-exempt bonds.

5. Continuing failure to comply with MHFA's Fair Housing policies, procedures or requirements will be penalized. MHFA will impose up to a 25-point penalty to all parties involved in ownership and management for future housing credit projects. The penalty points will remain in force for two years and may be applied to tax exempt tax credit projects, owner and managers.

## **G. Minimum Underwriting Factors**

A development selected for a reservation of tax credits is selected based upon the underwriting factors relating to maintenance and operating expenses and permanent financing stated by the applicant in it's application and as approved by MHFA (See Section VI.B). These factors will be monitored throughout the tax credit process until completion of IRS Form 8609. MHFA WILL NOT ALLOW ANY SIGNIFICANT ADJUSTMENTS TO THESE FACTORS. Changes in these factors could lead to the revocation of the tax credit allocation.

## **H. Identity of Interest**

The applicant must disclose any and all relationships (generally based on financial interests or family ties) with others involved in the project. A written disclosure to the MHFA detailing the nature of all identity of interest relationships is required for all parties.

## **I. Disclosure and Eligibility of Development Team**

The applicant must disclose the names and addresses, including corporate officials where applicable, of all parties that have a significant role in the project ("significant parties"). These significant parties include, but are not limited to general partners, accountants, architects, engineers, financial consultants, any other consultants, management agents and the general contractor (complete Attachment 14, HTC 19, Development Team Resume.) MHFA must be satisfied that those who will own and operate the project are familiar with and prepared to comply with the requirements of the program.

The following significant parties are not eligible to participate in the Tax Credit Program:

1. Significant parties who have been convicted of, enter an agreement for immunity from prosecution from, or plead guilty, including a plea of *no lo contendere*, to a crime of dishonesty, moral turpitude, fraud, bribery, payment of illegal gratuities, perjury, false statement, racketeering, blackmail, extortion, falsification or destruction of records;
2. Significant parties who are currently debarred from any Minnesota program, other states' program, or any federal program;
3. Significant parties who have serious and persistent compliance monitoring violations may not be eligible at the sole discretion of the MHFA; or
4. Significant parties having an Identity of Interest with persons or entities falling into any of the above categories may not be eligible at the sole discretion of MHFA.

## **J. Determination of Credit Amount**

Federal law mandates that, although a proposed project may be eligible for up to 70 percent or up to 30 percent present value credit amount, the MHFA may not allocate more credit than is necessary for the financial feasibility of the project and its viability as a qualified affordable housing project throughout the compliance period.

After a project meets the development selection criteria, including marketability, the MHFA will evaluate each proposed project, taking into consideration:

1. Development costs, including, developer fees, builder profits, contractor overhead, and general conditions.
2. All sources and uses of funds.
3. Projected income and expenses.
4. Proceeds expected to be generated from the sale of tax credits, including historic tax credits.

5. The difference between total project costs and total available financing resources, which is referred to as the GAP. A calculation is made to determine the amount of tax credits needed by the project to fund the GAP over a ten-year period, based on the estimated market value of the tax credits.

Based on this evaluation, MHFA will estimate the amount of credit to be reserved for each application. This determination is made solely at MHFA's discretion and is not a representation as to the feasibility of the project. Rather, it will serve as the basis for making a reservation of credits. The amount of the tax credit can change during the process due to variations in cost, mortgage amount, tax credit percentage, syndication proceeds, etc.

This analysis to determine the maximum amount of tax credits must be performed by both MHFA and the owner/developer at the time of application, at the time a carryover allocation is approved, and at the time the project is placed in service, providing all project costs are finalized and certified.

If there are changes in resources and/or uses of funds or other material changes, the MHFA will adjust the tax credit amount to reflect the changes, and the tax credit may be reduced. Any additional tax credits for the project will depend upon the availability of credits.

#### **K. Requests for Additional Credit Amounts**

Projects that have had a justifiable increase in eligible basis or previously received a partial allocation may be eligible to apply for supplemental tax credit amounts.

Developers who have a MHFA reservation from the current year will be required to submit a revised Multifamily Application Form (RFP/HTC 1), documentation supporting the increased amount of credits requested, and a supplemental application fee.

A complete application package with all attachments and a full application fee will be required for additional tax credits for developments initially awarded tax credits from a suballocator or that have a tax credit allocations from a prior year.

MHFA permits only one supplemental or additional tax credit allocation award for each development.

Applications that are submitted for an additional tax credit amount will be subject to the same evaluation process described above, the availability of credits, as well as limitations on the time period for allocation of additional credits under Section 42.

#### **L. Resubmission Process for Non Select Projects**

In a current allocation year, if a project fails to receive credits in Round 1, it may be considered for a reservation of tax credits in Round 2 by following these guidelines. Resubmittal must occur by MHFA's HTC application deadline. MHFA will not consider applications resubmitted after the deadline. A resubmitted application must include the following:

1. Cover letter requesting resubmission with MHFA's not select letter attached.
2. Re-signed and redated application (all changes from the initial application must be highlighted).

3. Any new documentation obtained since the previous application.
4. Evidence of any scoring change (Attachment 1 – Exhibit A).
5. Any documentation MHFA deems necessary (upon request only).
6. The Supplemental Application fee.

MHFA reserves the right to require a full, new application for any project. This right will be exercised if MHFA staff feels the proposed project differs substantially from the initial application.

#### **M. Qualified Census Tracts and Difficult Development Areas**

Federal law permits, but does not require, MHFA to reserve a greater amount of credits than the legislated maximum credit percentage for projects in areas that meet the following criteria:

1. Qualified census tracts (QCT) designated by HUD in which 50 percent of the population has an income of less than 60 percent of the area median or has a poverty rate of at least 25 percent; where such areas do not comprise more than 20 percent of the overall population, (For QCT on the internet, go to [www.huduser.org/datasets/qct.html](http://www.huduser.org/datasets/qct.html). For Census Tract information on the internet, to the <http://tier2.census.gov/ctsl/ctsl.htm>.)

**The current QCT list will remain in effect until HUD has published a QCT list consistent with the above provision. An updated QCT list is expected in late 2001 or early 2002.**

Or

2. Difficult development areas (DDA) designated by HUD as having high construction, land, and utility costs relative to area median income.

For DDA Information, go to the same as QCT above.

#### **N. Reservations**

Once staff has ranked applications and determined allowable credit amounts for each application, staff will make recommendations to the MHFA Board of Directors for final approval of the reservation of credits. After the ten-day adjustment period (referenced below), the selected applicant will have twenty days to acknowledge selection by returning an executed project profile, request for election of applicable percentage, and the appropriate reservation fee (See Section X).

MHFA's tax credit program permits its owners to elect the applicable percentage either at reservation or placed in service. If the election is not made at the time the reservation letter is issued, the percentage will be fixed for the month in which the building is placed in service. The Owner must be sure to consider the best options for this election and make sure the election is made at the correct time. Once made, the election is irrevocable. Upon receipt of the required documents, MHFA will complete its reservation review and send reservation agreements to be executed by the owner. Each reservation shall be conditioned

upon receipt of written certification, evidence of timely progress forward completion of the project acceptable to MHFA, and evidence of compliance with federal tax requirements.

Choosing the gross rent floor date as the date of allocation or the date of placed in service can be done at any time from reservation forward but must be done prior to the date the project is placed in service. If you choose to make the election as of the date of the reservation, submit a fully executed Statement of Election of Gross Rent Floor (HTC 26, Attachment 24) for each building of the development in which there are housing tax credit units. If these required forms, fully executed, by the Owner, are not submitted to MHFA prior to the placed in service date, with all elections made by the owner, the gross rent floor date will be effective on the allocation date of the tax credits.

MHFA maintains the right not to reserve tax credits for any project if it determines, in its sole discretion, that a reservation for such project does not further the purpose and goals as set forth in Section II of this plan.

#### **O. Administrative Errors**

If the applicant believes that the MHFA has misinterpreted, was not aware of, or miscalculated the applicant's submission at time of application/reservation, the applicant must submit in writing evidence supporting their position within five business days of MHFA's notification of application status. Notification will be in the form of a selection or non-selection letter. The first business day after the date on this letter will be the first day of the notification period.

If the evidence provided by the applicant is accepted and the selection points of the project are affected, the MHFA will re-rank all projects in the order of descending selection points. After an additional five business day period, the MHFA's rankings will stand and reservations for selected projects will be distributed.

#### **P. Waiting List**

In Round 2, eligible applications will be maintained on a waiting list in the event the MHFA receives National Pool credits or returned credits. The waiting list will follow MHFA's selection point ranking. Generally, projects will be chosen in order; however, depending on time and funds available, the MHFA reserves the right to make modifications to the waiting list. If an application is not selected for a reservation of tax credits by the end of the calendar year, there will be no further consideration. The applicant must submit a new application in the next funding round to receive consideration for a tax credit allocation.

#### **Q. Carryover Allocations**

Federal law provides that the MHFA may give a carryover allocation to certain qualified building(s), which are to be placed in service no later than December 31 of the second year after the allocation year for which the reservation was issued. To receive a carryover allocation, the owner must submit a complete carryover package to the MHFA no later than November 1 of the allocation year for which the reservation was issued. Recent changes in the housing tax credit allocation law requires that more than 10 percent of the expected basis in the project (including land) must be expended by the later of the date which is six months after the date that the allocation is made or the close of the calendar year in which the allocation is made. However, the carryover allocation must be executed prior to December 31 of the allocation year for which the reservation was issued. For a carryover agreement to be valid it must include, among other things, the amount of the reasonably

expected basis at the end of the second year after the initial reservation and the carryover basis expended by the later of the date which is six months after the date that the allocation is made or the close of the calendar year in which the allocation is made. An estimate of the expenditure of greater than 10 percent of the expected basis must be performed by a Certified Public Accountant (CPA) and submitted to MHFA no later than November 1 of the allocation year for which the reservation was issued. Failure to comply with the submission dates will result in significant penalties as outlined in Section X.E. Additional carryover requirements are given in Section VIII.B.

**Several changes to Section 42 of the Internal Revenue Code were included in legislation passed by Congress in December 2000 as part of the Community Tax Relief Act of 2000. These amendments made certain changes to the Carryover Allocation requirements. However, no guidance has been issued by the IRS regarding these changes. The MHFA 2001 Housing Tax Credit carryover procedures will have to be modified further to conform with the new laws when sufficient guidance has been received from the IRS. The final carryover procedures are expected to be included in the carryover package mailed to owners of selected developments later this year.**

## **R. Final Allocations**

Except for carryover allocations, no allocation of tax credits will be made until a building or project is placed in service, and the proper documentation and fees have been received. The final amount of credits is determined when the project is placed in service.

Final allocations (Form 8609) may be requested when all eligible buildings are placed in service and the proper documentation and fees have been received. MHFA may establish, at its sole discretion, required deadlines prior to year-end for final allocation requests in order to permit timely processing of documents. If an owner of a tax credit development does not intend to obtain a carryover allocation, but instead intends to take a project from credit reservation directly to placed-in-service status, an allocation via issuance of 8609 must be obtained prior to year-end of the allocation year for which the reservation was issued. The tax credit application for issuance of such 8609's must be submitted to MHFA on or before November 1 of the allocation year for which the reservation was issued. **A project that has neither received a Carryover Allocation nor has been placed in service and issued appropriate 8609's before December 31<sup>st</sup> of the year of allocation will lose its entire allocation of credits.**

The tax credit amount that will be allocated is based on MHFA's final determination of the qualified basis for the building or project and a review of the project costs as outlined in Section VII.C. The allocation may be reduced to comply with federal law based on the final review of the project.

Prior to final allocation the project owner is required to execute and record a Declaration of Land Use Restrictive Covenants.

Non-compliance with the terms of a reservation of credits or a carryover allocation will result in a loss of credits.

## S. Monitoring for Compliance

Federal law requires that the MHFA provide a procedure to be used in monitoring for noncompliance of Section 42 and for notifying the Internal Revenue Service of such noncompliance. MHFA is required to apply the monitoring procedure to all tax credit projects developed within MHFA's jurisdiction including tax credits issued with tax exempt bonds since the inception of the HTC Program. MHFA shall perform such duties in accordance with its Housing Tax Credit Compliance Monitoring Manual. Copies are available upon request.

1. All tax credit recipients shall submit an annual certification to MHFA in a manner, form, and time established by MHFA. The certification will include, but is not limited to, the submission of completed IRS forms and compliance monitoring fees.

In addition to the annual owner certification requirements, for the first year of the credit period owners shall submit a copy of the Characteristics of Tenant Household report (HTC 30), which details demographic data on households initially occupying units in the development from the placed in service date to the end of the first year of the credit period.

2. A review of tenant certifications including the tenant applications, third party verifications and supporting documentation of income, as well as general project appearance will be conducted in accordance with MHFA's Compliance Monitoring Manual. The compliance report including tenant name(s), household information, amount and sources of income, rents, utility allowance or cost, and other unit information is required to be maintained at all times and will be submitted annually. All tax credit recipients will also maintain, as part of the official project records, the tenant applications, income certifications and verification of tenants' income.
3. MHFA will conduct its first monitoring inspection no later than the end of the second year of the credit period. Such inspection will include, but is not limited to, a review of tenant files and physical inspection of 20 percent of the low-income units.
4. MHFA will conduct a compliance inspection of each development at least once every three years. Such inspection will include, but is not limited to, a review of tenant files and physical inspection of 20 percent of the low-income units.
5. MHFA shall have access to all official project records, including IRS reporting forms, upon reasonable notification. All official project records or complete copies of such records must be made available to MHFA upon request.
6. To accomplish its compliance monitoring responsibilities, MHFA will charge a fee of \$50 per project or \$25 for each unit in the project annually. MHFA reserves the right to adjust the annual fee to offset administrative costs.
7. MHFA will promptly notify the IRS of any project noncompliance within its responsibility as contained in Section 42. MHFA has no jurisdiction to interpret or administer Section 42, except in those instances where specific delegation has been authorized.



## **T. Tenant Selection Plan**

The MHFA requires that a Tenant Selection Plan (Plan) is readily available to anyone interested in such Plan for review and/or retention. The MHFA will not develop or provide such a Plan to owners or management companies.

Federal, State and local fair housing laws should be consulted when owners/managers are developing a Plan. It is the responsibility of the owner/manager to have a thorough understanding of the basis under which discrimination is prohibited.

A Plan developed for the purpose of objectively selecting potential residents should have a focus on demonstrating an ability to live in harmony with others in a respectfully manner. Factors to consider of persons interested in the available housing should include but not limited to income eligibility, ability to pay the required rent, deposits, and applicable tenant paid utilities; previous rental history; references, expectations of all residents to management, neighbors, visitors to the development, etc.; and the expectations of residents.

## **U. Other Conditions**

No member, officer, agent, or employee of MHFA shall be personally liable concerning any matters arising out of, or in relation to, the allocation and monitoring of Housing Tax Credits.

## **V. Revisions to the Manual and Allocation Plan**

To the extent necessary to facilitate the award of Housing Tax Credits that would not otherwise be awarded, this Procedural Manual and attached QAP may be modified by MHFA from time to time. The Board of Directors may make minor administrative modifications deemed necessary to facilitate the administration of the HTC Program or to address unforeseen circumstances. Further, the Board is authorized to waive any conditions that are not mandated by Section 42 on a case-by-case basis for good cause shown.

A written explanation will be made available to the general public for any allocation of a housing credit dollar amount that is not made in accordance with MHFA's established priorities and selection criteria.

The attached QAP may be amended for substantive issues at any time following public notice and public hearing. Said hearing will be held at the main offices of the Minnesota Housing Finance Agency in St. Paul, Minnesota. Any substantive amendments will require approval of the MHFA Board of Directors and the Governor.

To the extent that anything contained in the Manual and QAP does not meet the minimum requirements of federal law or regulations, such law or regulation shall take precedence.

## **V. FEDERAL PROGRAM REQUIREMENTS**

### **A. Eligible Activities**

Eligible activities for tax credits include new construction, substantial rehabilitation, or acquisition with substantial rehabilitation.

### **B. Applicable Percentage**

There are two levels of applicable percentage, depending upon whether the building is new or existing, whether there are rehabilitation expenditures and whether the buildings are federally subsidized.

1. New Buildings and Qualifying Rehabilitation Expenditures (if neither is federally subsidized):

With respect to new buildings or qualifying rehabilitation expenditures which are not subsidized, the applicable percentage is an amount resulting in aggregate credits having a present value of 70 percent or qualified basis. Traditionally, this has resulted in a credit percentage of approximately 9 percent.

2. New Buildings and Qualifying Rehabilitation Expenditures that are Federally Subsidized and Existing Buildings:

With respect to new buildings and qualifying rehabilitation expenditures which are federally subsidized, and the acquisition of existing buildings that are substantially rehabilitated, the applicable percentage is an amount which results in aggregate credits having a present value of 30 percent of qualified basis. Traditionally, this has resulted in a credit percentage of approximately 4 percent.

The 9 percent and 4 percent credit percentage represents the maximum potential rate. For the current rate, you may contact MHFA or visit <http://www.carh.org/>.

### **C. Qualifying Rehabilitation**

Rehabilitation expenditure requirements are established both by state and federal law.

Under Section 42(e), rehabilitation expenses qualify for the credit if the expenditures for each building:

1. Are able to be allocated to one or more low income units or substantially benefit low income units; and
2. Equal the greater of:
  - a. \$3,000 per low income unit; or
  - b. An amount that is not less than 10 percent of the adjusted basis of the building, as determined pursuant to Section 42(e)(3).

In addition to the Section 42(e) requirements, Minnesota Statutes Section 462A.221, Subdivision 5, requires rehabilitation expenditures for the project of \$5,000 per unit.

It is necessary to acquire an existing building in order to incur qualifying rehabilitation expenditures with respect to that building. In such a case, the costs of acquiring the existing building may be eligible for the 30 percent present value credit and the rehabilitation expenditures may be subject to the 70 percent present value credit.

#### **D. Existing Buildings**

In order for an existing building to qualify for the 30 percent credit in connection with substantial rehabilitation, there must have been a period of at least 10 years between the date the building was acquired and

1. The date it was last placed in service; or
2. The date of its most recent nonqualified substantial improvement, whichever is later. See Section 42(d)(2).

#### **E. Exception to the Ten-Year Rule**

Exceptions to the ten-year rule are provided in Section 42(d)(6) for federally assisted buildings, certain low-income buildings subject to mortgage prepayment, and buildings acquired from insured financial institutions in default. Certain other situations are exempt from the ten-year rule, such as:

1. A person who inherits a property;
2. A government unit or qualified nonprofit group if income from the property is exempt from federal income taxation;
3. A person who gains a property through foreclosure (or instrument in lieu of foreclosure) of any purchase money security interest, provided the person resells the building within 12 months after placing the building in service following foreclosure; or
4. Single family residences that had no use during the prior ten-year period except as an owner-occupied principal residence will not be treated as being placed in service for purposes of the ten-year holding period. Note that although the 10-year rule does not apply, the property must still be substantially rehabilitation to claim the acquisition costs of such a property.

#### **F. Federal Subsidies**

The determination of whether a building is federally subsidized is addressed in Section 42(i)(2). In general, a building is treated as federally subsidized if there is financing which is tax exempt under Section 103 or there is a "below market federal loan," the proceeds of which were used (directly or indirectly) in the building or its operation.

Section 42(i)(2) states that certain types of assistance are below market federal loans and provide for certain exceptions. In addition, there have been Revenue Rulings in this area.

HOME Investment Partnership Program (HOME) or the Native American Housing Assistance and Self-Determination Act (NAHASDA) of 1996 dollars are not considered a federal subsidy as long as at least 40 percent of the units in the proposed property are occupied by individuals whose income is 50 percent or less of area median gross income (AMGI). In high cost areas, at least 20 percent of the units in the proposed property must

be occupied by individuals whose income is 50 percent or less of area median gross income (AMGI).

Assistance derived from federal grants such as HODAG or UDAG will not be treated as a federal subsidy, but must be subtracted from the qualifying basis.

Section 8 rental "voucher" subsidies and funds received through the Community Development Block Grant Program (CDBG) are not considered federal subsidies.

Under the Federal Home Finance Board (FHFB) Affordable Housing Program, established in 1989, Federal Home Loan Banks are able to make subsidized advances to member banks that are in turn to be used for affordable housing projects in its area. The Treasury Department has ruled that for tax credit purposes, loans provided by the FHFB will not be considered as federal loans. Thus a FHFB below-market rate loan with an interest rate lower than the Applicable Federal Rate (AFR) will be eligible for the 70 percent tax credit percentage rate for new construction or rehabilitation expenditures rather than the 30 percent rate.

Rural Development (RD) Section 515 loans are considered a federal subsidy.

Federal grants are excluded from basis in determining the amount of credit, but do not otherwise affect the availability or amount of the credit.

Owners of a property receiving a federal subsidy have the option of treating the subsidy amount as if it were a federal grant and deducting the amount of the subsidy from the qualified basis or costs against which the amount of the credit is calculated.

Any type of tax-exempt financing provided by state or local governments where the interest is exempt from Federal taxation under the Internal Revenue Code, is also considered a federal subsidy.

## **G. Review of Federally Assisted Projects**

MHFA will review those projects using RD Section 515 Rural Housing Loan funds in accordance with RD Instruction 1944-E Exhibit A-10. No application will be reviewed without the inclusion of a RD Form AD-622, Notice of Pre-application Review Action. It is the responsibility of the applicant to provide MHFA with any additional information or clarification of funding sources as may be necessary. Prior to issuance of the IRS Form 8609, the applicant must submit to MHFA a copy of RD Form 1944-51, Multiple Family Housing Obligation-Fund Analysis. This form will be used in the determination of the final allocation of tax credits to a project.

## **H. Federal Subsidy Layering Review**

Section 911 of the Housing and Community Development Act of 1992 requires that specific procedures be followed for subsidy layering review when tax credits and HUD assistance are combined in a single project. Sponsors of projects that combine HUD assistance and tax credits should be aware that subsidy layering review must be completed for their projects, and should contact MHFA to receive additional information prior to submitting their application.

Subsidy layer review are required for the following programs, but not limited to: Metropolitan Housing Opportunity Program (MHOP), U.S. Housing and Urban Development

(HUD) insurance and Section 8 project-based rental assistance, etc. At a minimum the following documents must be submitted:

1. Rental Housing Project Income analysis and appraisal, signed and dated by HUD (Form 2264a);
2. A line item sources and uses statement;
3. Partnership (Syndication) Agreement, spelling out the equity contributions and dates of disbursement; and
4. Copy of Multifamily Application Form HTC/RFP 1.

## **I. Project Eligibility**

The purpose of the housing tax credit is to assure that a sufficient number of rental units are available on an affordable basis to low income persons. Applicants should be cautioned that this set aside represents the minimum number of units that must meet both rent and income restrictions to qualify for tax credits for each year of the credit period. A development must, for a specific period of time, meet one of the following minimum tests:

20/50 Test:

To meet the 20/50 Test, a minimum of 20 percent of the residential units must be both rent restricted and occupied by individuals whose income is 50 percent or less of area median gross income (AMGI) (as established for different geographical areas by the U.S. Department of Housing and Urban Development) adjusted for family size.

Or

40/60 Test:

To meet the 40/60 Test, a minimum 40 percent of the residential units must be both rent restricted and occupied by individuals whose income is 60 percent or less of AMGI adjusted for family size.

Once made, the choice between the 20 percent at 50 percent formulation and the 40 percent at 60 percent formulation is irrevocable.

Note: The actual number of restricted units within the project must be consistent with the initial applicable fraction selected at the time of reservation.

## **J. Affordable Rents**

The rent restrictions for the units are governed by Section 42 and regulations, rulings and other announcements by the IRS. The following summary is not intended to be comprehensive. A violation of the tenant income or rental restrictions in Section 42 may result in project ineligibility or a reduction in basis and/or credit amount.

Rent Restriction: For a unit to count as a low-income unit, the gross rent may not exceed 30 percent of the imputed tenant income limitation. The imputed income limitation applicable to a unit equals the permissible income limitations that would apply if the number of individuals occupying the unit were:

1. One individual in the case of a studio apartment; and
2. 1.5 individuals per bedrooms in the case of a unit with one or more separate bedrooms.

Therefore, the rent restrictions applicable to a low-income unit is determined by which test is elected and how many bedrooms are contained in the unit. Current income limits, as derived from the Department of Housing and Urban Development, for Minnesota counties are attached as Attachment 16.

“Gross rent” means all payments by the tenant, including non-optional charges and payments for utilities other than telephone and cable. If the tenant pays utilities directly, the maximum rent that can be paid to the landlord is reduced to a utility allowance determined in accordance with rules under Section 8 of the U.S. Housing Act of 1937 (Section 8). IRS Regulations (Section 1.42-10) provide that a building owner must apply Rural Development (RD) utility allowances to any rent-restricted unit in a building where either the building or any tenant receives RHA housing assistance. For a building that is neither HUD nor RD assisted, the building owner may use either the applicable Public Housing Authority (PHA) utility allowance or the owner may obtain a letter from the local utility company providing the estimated cost of that utility for each unit of building with both HUD and RD assistance. See attached Notice 89-6 for more detailed information. Utility allowances must be updated at least annually.

Federal, state and local rental assistance payments (such as Section 8 payments) made on behalf of the tenant are not included in gross rent.

Additional rent restrictions may apply if the award of tax credits was made based on such additional restrictions.

## **K. Tenant Eligibility**

To be a low income unit for purposes of determining the qualified basis, the tenant must have income at or below 50 percent of AMGI if the 20/50 Test is elected, or 60 percent of AMGI if the 40/60 Test is elected. The unit must be rent restricted as set forth above, and the unit must be suitable for occupancy.

The combined household income of all tenants occupying a tax credit eligible unit must be less than or equal to the elected income requirements as shown on Attachment 16. Median income for non-metro counties is the higher of the statewide non-metro median or county median income.

Units are not eligible for tax credits if they are occupied entirely by full-time students. Exceptions to this rule are:

1. Married students filing a joint income tax return.
2. Students who are Minnesota Families Investment Program (MFIP) recipients or single parents and their children, as long as neither parent nor children are dependents or another individual.

3. Students enrolled in a job training program under the Job Training Partnership Act or a similar federal, state or local program or receiving assistance under Title IV of the Social Security Act.

#### **L. Eligible Basis**

In general, the eligible basis of a building is equal to the building's adjusted basis for acquisition, rehabilitation or construction costs for the entire building, subject to certain conditions and modifications set forth in Section 42(d). As a general rule, the adjusted basis rules of Code Section 1016 apply, with the exception that no adjustments are made for depreciation. Some of the special provisions for determining eligible basis under Section 42(d) are:

The eligible basis may be increased for new buildings and substantial rehabilitation to existing buildings that are located in designated qualified census tracts, (QCT) and difficult development areas (DDA).

The cost of the non-low income residential units in a building is included in eligible basis only if the quality of these units does not exceed the average quality of the low-income units. If the cost of a non-low income unit exceeds the cost of a low-income unit (using the average cost per square foot and assuming the same size) by more than 15 percent, the entire cost of the non-low income unit must be excluded from the building's eligible basis. If the excess cost is not more than 15 percent, the owner may make an election to exclude only the excess cost of the non-low income unit(s) from eligible basis.

The cost of depreciable property used in common areas or provided as comparable amenities to all residential units (e.g., carpeting and appliances) is included in determining eligible basis. The cost of tenant facilities (e.g., parking, garages, swimming pools) may be included in eligible basis if there is no separate charge for use of the facilities and they are available to all tenants in the project.

The cost of a community service facility is included in basis only if the building is located in a qualified census tract. The eligible basis of that facility must not exceed 10 percent of the total eligible basis in the project. All community service facilities that are part of the same qualified low-income housing project shall be treated as one facility. A community service facility is defined as a facility that is part of the qualified low-income housing project designed to serve primarily individuals including tenants and non-tenants whose income is 60 percent or less of area median income. **No guidance has been issued by the IRS regarding these changes. The MHFA anticipate the 2002 Housing Tax Credit Manual will have to be modified further to conform with the new laws when sufficient guidance has been received from the IRS.**

Eligible basis is reduced by federal grants, residential rental units that are above the average quality standard of the low-income units, historic rehabilitation credits, and nonresidential rental property. Buildings located in areas designated as a QCT or DDA may be eligible for an increase in allowable basis.

#### **M. Qualified Basis**

Qualified basis is the portion of the eligible basis applicable to low income housing units in a building. Qualified basis is the product of a project's eligible basis multiplied by the applicable fraction.

## N. Applicable Fraction

The applicable fraction is the lesser of:

1. The unit fraction, which is the number of low-income units in a building divided by the total number of residential rental units; or
2. The floor space fraction is the total floor space of the low-income units in the building divided by the total floor space of the residential rental units in the building.

A full time resident manager's unit is not considered a residential unit and must not be included in the numerator or denominator for calculating the applicable fraction.

Throughout the planning, construction and placed in service periods, the applicable fraction has different nuances. At initial application and at carryover, the **“estimated project applicable fraction”** will be used. It is an approximate goal that the developer is striving to attain. It is calculated by project in order to obtain a rough estimate of the percentage of eligible units and square footage needed and an estimate of the total amount of tax credits necessary for a particular project.

At the time that the placed in service application for 8609 is made, the **“targeted applicable fraction” for each building** is calculated. The targeted applicable fraction is determined on a building-by-building basis. Each building in a multiple building development could have a different applicable fraction. Because the estimated project applicable fraction is approximate, the targeted applicable fraction calculated by building will frequently differ unless the project has a 100 percent applicable fraction. The targeted applicable fraction is also listed as part of the extended use criteria in the Declaration of Land Use Restrictive Covenants, which is recorded and remains with the property.

## O. Economically Integrated Projects

Projects under common ownership and management that have tax credit units and market rate units are termed economically integrated projects. These projects receive priority points for selection. (See Selection Priority #6, Attachment 1, Exhibit A.) In an economically integrated project each building must have an applicable fraction of less than 100 percent. Unless otherwise approved by MHFA, all buildings must be expected to have comparable applicable fractions with necessary variations due to building size. The number of tax credit units will be determined by the developer. A complete application for the entire project will be necessary at the time of application. HTC selection points will generally be based upon the characteristics of only the tax credit units, with the exception of economic integration points.

**Note: The actual number of restricted units within the project must be consistent from selection, through carryover and to approval of an 8609.**

## P. Annual Credit Amount

The tax credit is available each year for 10 years. The amount of tax credit awarded is based on the Qualified Basis multiplied by the applicable percentage. However, Section 42(m)(2) requires MHFA to limit the amount of credit to the amount necessary to assure project feasibility under rules established by the IRS. Therefore, the actual amount of tax credits awarded could be less than the maximum allowable if the analysis reveals the project would still be feasible with fewer tax credits.



The IRS publishes the applicable percentages (~~Applicable Credit Rate~~) on a monthly basis. These figures are used to calculate the maximum allowable annual credit amount for which the project will be eligible.

#### **Q. Declaration of Land Use Restrictive Covenants**

Prior to an allocation of Section 42 tax credits, a project will be subject to a Declaration of Land Use Restrictive Covenants (Declaration) between the owner and MHFA through which the owner commits the building(s) to low income use for an extended use period of at least 15 years after the conclusion of the 15-year compliance period (a total of 30 years).

The Declaration terminates upon: (a) foreclosure of the building (or deed in lieu of foreclosure); or (b) during the extended use period, upon failure of MHFA to find a purchaser by the end of one year after a request by the owner to the MHFA to find a purchaser for the low income portion of the building, at a statutory minimum purchase price, unless the owner has waived its right to exercise their option. For a period of three years after termination of the Declaration, the owner may not evict existing low income tenants (other than for good cause) and may not increase the gross rent of low income units.

The Declaration must be recorded a restrictive covenant and submitted to the MHFA prior to MHFA issuing the allocation 42(h)(6), and will set forth the commitments made by the owner to the MHFA in obtaining points including any additional rent restrictions and occupancy requirements placed upon the building at the time of reservation.

Non-compliance with these additional conditions will result in a permanent ban on future allocations of tax credits for all parties involved.

#### **R. Ineligible Properties**

Life care facilities and manufactured housing parks are not eligible. Projects with buildings having four or fewer residential units must comply with 42(i)(3)(c).

Any building that receives Section 8 Moderate Rehabilitation Assistance at any time during the minimum 15-year compliance period is ineligible for tax credits. Projects that receive assistance under the Stewart B McKinney Homeless Assistance Act are eligible for tax credits, as provided in Section 42(c)(2)(B).

Acquisition and/or Substantial Rehabilitation projects with a pre-existing subsidy (any building substantially assisted, financed, or operated under HUD Section 8, Section 221(d)(3), (d)(4), Section 220, Section 8 existing, Moderate Rehabilitation, or the Section 236 program or under the Farmer's Home Administration Section 515 program) will be eligible to apply for tax credits only under the following conditions:

1. It preserves assisted low income housing which, due to mortgage prepayments or expiring rental assistance, would convert to market rate use. This must be demonstrated to the satisfaction of MHFA; or
2. It has been demonstrated to the satisfaction of the MHFA that the building qualifies as a "troubled property." In order to qualify as such, a responsible official of a governmental lender, such as MHFA, HUD, or RD, must provide a written explanation and documentation that the property is troubled. Generally, the property must be in default or foreclosure.

## **S. Passive Loss Restrictions**

There is a limit on the amount of credit any individual may effectively use due to passive loss restrictions and alternative minimum tax provisions. Consult your tax attorney or accountant for clarification of this regulation.

## **T. State Volume Limits**

Each state is limited to the amount of tax credits it may allocate annually. Minnesota's 2002 per capita volume limit is expected to be approximately \$8,600,000.

Projects with tax-exempt bond financing, which are subject to a separate volume limitation, are not counted against the state volume limit. (See Article 9 of the QAP (Attachment 1) and Section VIII.D. of the Manual for further details.)

## **U. Recapture**

MHFA reserves the right to recapture tax credits from projects that do not provide evidence satisfactory to MHFA of progress toward completion of the project in accordance with the construction schedule provided at carryover or noncompliance with the terms of the allocation.

Part of the credit will also be recaptured if the qualified basis at the close of any year is less than the amount of such basis at the close of the preceding taxable year, or if the minimum number of qualified low-income units is not maintained for the complete extended use period.

## **V. Market Review**

A comprehensive market review of the housing needs of low-income individuals in the area to be served by the project will be conducted by the MHFA at the developer's expense before the credit allocation is made.

## **W. Tenant Ownership**

The MHFA will review projects incorporating tenant ownership provisions in accordance with Sec. 42 (h)(6) and IRS Revenue Ruling 95-49 (Attachment 8-Exhibit E). It is the responsibility of the applicant to provide MHFA with any additional information or clarification as may be necessary.

## **X. Fair Housing and Contract Compliance Policy**

It is the policy of the MHFA to administer and provide fair and equal housing opportunity in all Agency programs to ensure all residents of Minnesota of similar income levels in the same housing market area have equal access to Agency programs in a manner that affirmatively furthers fair housing. Further, it is the policy of MHFA to prohibit discrimination in the sale, rental, financing, or other services related to housing on the basis of race, color, creed, religion, national origin, sex, sexual orientation, marital status, status with regard to receipt of public assistance, disability, or familial status.

The Policy exists to assist all persons involved with MHFA financed programs in providing fair housing opportunities. The Policy applies to MHFA staff and everyone doing business with the Agency.

It is required that all MHFA programs are marketed affirmatively using specific steps for each program. These steps include but are not limited to:

1. Conducting public information forums and other outreach activities geared toward informing and encouraging participation of protected groups.
2. Marketing strategies that reach protected groups (groups of people that come under any of the categories on which bases discrimination is prohibited as mentioned in the opening paragraph) using conventional methods such as print and electronic media, as well as personal contact, mailings, and use of consultants or MHFA staff.
3. Reviewing federal, state and/or local fair housing guidelines periodically to ensure compliance.

Failure to comply with MHFA's fair housing policies, procedures or requirements will prompt Agency staff to report non-compliance matter to the MHFA Commissioner. Continued non-compliance may result in appropriate action by the Commissioner, including the imposition of up to 25 penalty points. (Refer to Section IV.F Unacceptable Practices.)

It is the policy of the MHFA to take affirmative action to provide equal opportunity in all of our programs and other endeavors. The Agency's goal is to achieve a client and recipient mix that is representative of the people who live in our state and our communities, so that all employment and contractual benefits that develop as a result of our programs will be shared by all residents of Minnesota. This policy applies to all Agency employees and everyone with whom we do business.

## VI. DEVELOPMENT STANDARDS

All applications for Housing Tax Credits from the MHFA will be evaluated according to the following standards (Small projects, local redevelopment or revitalization projects, and projects developed in difficult-to-develop areas may be considered eligible for variances from these standards, if justified.):

### A. Project Cost Reasonableness

MHFA will evaluate the costs of each proposed project in comparison to current comparable projects to determine whether the proposed costs are reasonable. The Agency will take into consideration unique characteristics of the project and its comparability to similar projects. MHFA will require additional documentation if the Agency feels the proposed costs are not comparable or reasonable. Current MHFA tax credit project comparable will continue to be the driving factor in approving project costs.

### B. Minimum Underwriting Standards for Amortizing Debt and Maintenance and Operating Expenses Benchmarks

MHFA has established Minimum Underwriting Standards and Management and Operating Expenses (M&O) Benchmarks based upon MHFA's existing portfolio of developments and the recommended Best Practices for HTC Underwriting adopted by the National Council of State Housing Agencies (NCSHA) in 1998. These Minimum Underwriting Standards are described in Attachment 25 (HTC 29).

Comparisons will be made to M&O data available from MHFA's maintenance data based on comparable projects. Determinations on whether proposed budgets are reasonable will also be based upon MHFA's management, maintenance and operating experience. M&O numbers will be evaluated on an expense per room/per year basis, the M&O number will not include reserves, taxes and other tax assessments.

MHFA requires all first mortgage lenders to use minimum underwriting standards maintenance and operating expense estimates which are not less than the benchmarks contained in Attachment 25 in their underwriting calculations. Written lender certification and supporting documentation is required.

### C. Eligible Basis Tax Credit Fees

*Developer Fees:* Include developer overhead, developer processing fees, developer profit, and any other amounts received by the Developer. MHFA will limit the amount of developer fees for the purposes of calculating eligible basis to determine the amount of tax credit. The developer fee is calculated by the MHFA as follows:

Dollar amount of Developer Fee ÷ (TDC – Dollar amount of developer fee).

In some instances, the developer may want to delegate some of the responsibilities to a third party, such as a processing agent or consultant. In such cases, the delegated responsibilities must be thoroughly understood by all parties involved and the fee paid to the third party shall be included as part of the developer fee. The limits are subject to MHFA review. The following limits will be used by MHFA:

Project Type	Development Limits	Maximum Developer Fee
<u>Rehabilitation</u>	First 30 Units	15%
<u>Rehabilitation</u>	<u>Units 31 and over</u>	8%
<u>New Construction or Substantial Rehabilitation</u>	First 50 Units	15%
<u>New Construction or Substantial Rehabilitation</u>	<u>Units 51 and over</u>	8%

*Consultant Fees:* Consultant application processing fees will be included within the developer fee limitation and should not exceed 2 percent of total project costs. Syndication related consultant fees are not to be included in the eligible basis of the project.

*Net Construction Cost:* Construction costs and on-site work not including contractor profit, general requirements, and overhead. MHFA will limit the amount of contractor fees for the purpose of calculating eligible basis to determine the amount of tax credit.

*Contractor Profit:* The maximum contractor profit is 6 percent of net construction costs.

*General Requirements:* Items of costs to be considered in this allowance include: on-site supervision, signs, field office expenses, temporary sheds and toilets, temporary utilities, equipment rental, clean-up costs, rubbish removal, permits, watchmen's wages, material inspection and tests, all of the builder's insurance (except builder's risk), temporary walkways, fences, roads and other similar expenses. The maximum general requirements allowed is 6 percent of the net construction cost.

*Contractor Overhead:* The MHFA allows a contractor an overhead allowance based on a percentage of the net construction cost. The permitted maximum allowance is 2 percent.

It is possible to exceed expenses in one area, if other areas are not at their maximum. The MHFA will allow the collective balance of contractor profit, general requirements and contractor overhead to equal 14 percent.

*Developer as Contractor:* When the developer and the contractor are the same entity, in addition to the fee limits stated above, the combined balance of developer fee, contractor profit, contractor overhead and general requirements may not exceed 20 percent of the total development cost.

#### **D. Reserves/Contingencies**

MHFA will require documentation of the amount and disposition of reserves/contingencies. If they revert back to the developer, general partner, or any ownership interest, MHFA will consider the reserves/contingencies as deferred developer fees and the above limits will apply. For letters of credit, bonds, etc., use the actual cost, not face value, when completing the Development Cost Section IV of the HTC application.

## **E. Comparative Analysis**

Notwithstanding these Development Standards and the Selection Criteria within this manual and the QAP, each and every proposed project is analyzed on a comparative basis in a variety of categories to ensure the highest value for the tax credits awarded.

## **F. Property Standard**

All newly constructed property must meet the Uniform Building Code, the National Standard Plumbing Code and the National Electrical Code Handbook. Rehabilitation projects should strive to meet these codes when reasonable. Projects containing facilities that are available to the general public must meet the Americans with Disabilities Act (ADA) requirements, and projects combining HTC with another federal source of funding must comply with Section 504 requirements.

In addition, the project must comply with the minimum required development features for family or elderly developments as specified in Attachment 3.

The owner and architect must certify compliance with all required MHFA HTC Design Standards and where points have been awarded that all the applicable standards and development features have been incorporated into the final working plans.

## **VII. PROJECT SELECTION**

### **A. First Round Application Requirements**

All applicants statewide must meet one of the threshold types for the first competition as required by Statute and defined in Article 6.2 of the QAP (Attachment 1). Greater Minnesota projects should also refer to Attachment 26 of this manual for a suggested letter format relating to evidencing thresholds.

In the final competition, projects that previously received an allocation of tax credits will receive priority in accordance with the provisions of Article 6.4 of the QAP (Attachment 1).

### **B. Market Review**

MHFA will conduct a market review to determine the housing needs of low-income individuals in the area to be served by the project. MHFA will evaluate the completed HTC Market Qualification Information Sheet (Attachment 2), the employment data from the Department of Economic Security, and in house occupancy data to determine the marketability of the proposed project. For market consideration, applicants are responsible for providing evidence to document new employment in the community at the time of application. MHFA relies heavily on the applicant for current information regarding housing need and job/economic growth within city jurisdictions. The MHFA will contact the applicant if there is a question as to the marketability of the proposed projects. The applicant will be given an opportunity to adjust the unit mix and/or number of resubmit prior to the MHFA scoring of selection priority points.

Proposed projects that do not appear marketable and do not modify their proposal will not receive further consideration in the current funding round.

### **C. Design Review**

The applicant's architect must certify compliance with all the required development features outlined in the HTC Design Standards (Attachment 3) before the project will be scored and ranked. MHFA will review project costs based on comparability and reasonableness. MHFA may, as its sole discretion, reject applications that appear to have excessive project costs. (Also refer to Section VI.A. Project Cost Reasonableness).

### **D. Development Team Review**

The MHFA will also consider the following factors when evaluating an application for a tax credit allocation.

1. The ability and capacity of the development team to proceed expeditiously to complete the proposed development.
2. The prior record of the development team in meeting MHFA and IRS reporting requirements.
3. The experience of the development team in developing and managing similar residential housing.

Proposed projects from applicants that do not appear to have the experience, capacity or ability will not receive further consideration in the current funding cycle.

## E. Site Review

MHFA staff will conduct a site inspection for each project passing the first three parts (A-C) of the project selection for consistency with “smart growth” principle. Site inspections will be conducted to analyze physical characteristics, surrounding property and community, location of schools, shopping, public transportation, employment centers, community facilities, availability of utilities, water and sewage treatment facilities, and the suitability of the site for the proposed housing.

For purposes of the MHFA’s investment in affordable housing, smart growth principles are as follows:

- Linkage: Housing development should be part of a comprehensive community development effort that links housing, jobs, transportation, recreation, retail services, schools, social and other services.
- Jobs: Housing is part of the infrastructure necessary to sustain economic vitality. New housing should be located near jobs and in areas of job growth and should address housing needs of the local work force. Preference will be given to proposals that provide housing in communities with job and population growth.
- Land Use: Housing must be developed to maximize the adaptive reuse of existing buildings and the use of existing infrastructure, where financially feasible. In cases of new development, we must maximize the efficient use of land and infrastructure and minimize the loss of agricultural and green space.
- Transportation: Housing must be developed near regional and interregional transportation corridors and transit ways.

The MHFA will consider, but is not limited to, the following environmental criteria when evaluating a proposed site.

1. Noise
2. Flood plains and wetlands
3. Site safety
4. Toxic and hazardous waste
5. Underground storage tanks
6. Asbestos

MHFA may, at its sole discretion, reject applications or recapture tax credits from projects that appear unsuitable for the housing purposed.



## **F. Cooperatively Developed Plan:**

MHFA staff will review each proposal for clearly identified goals relating to the housing element of a "Cooperatively Developed Plan" consistent with the mission of MHFA. A Cooperatively Developed Plan is a plan which encompasses multiple affordable housing and related service initiatives in a geographically defined area that is developed through the cooperation and input of two or more of the following entities:

- city or county (or instrumentally thereof),
- a regional unit of government,
- neighborhood and/or community group,
- housing providers and funders.

Proposals are to be rated on the extent to which they contain clearly identified goals relating to the housing element of a Cooperative Developed Plan.

## **G. Maintenance and Operating Expense Review and Underwriting Certification**

MHFA has established Minimum Underwriting Standards and Management and Operating Expense Benchmarks (Also refer to Section VI.B Minimum Underwriting Standards for Amortizing Debt and Maintenance and Operating Expense Benchmarks) based upon MHFA's existing portfolio of developments and the recommended Best Practices for HTC Underwriting adopted by the National Council of State Housing Agencies (NSCHA) in 1998. These Minimum Underwriting Standards are described in Attachment 25 (HTC 29).

MHFA will evaluate the completed HTC Application and Lender Certification contained in Attachment 25 (HTC 29) to determine the underwriting criteria used to calculate amortizing debt including but not limited to vacancy rates, debt coverage ratios, construction contingencies, management and operating expenses, reserve accounts, and inflation factors.

The MHFA will contact the applicant if there are any questions regarding the maintenance and operating budget. While MHFA strongly encourages the use of the published minimum standards and benchmarks, the applicant will be given an opportunity to adjust the M&O budget and resubmit prior to the MHFA scoring of selection priority points. At a minimum, the following information must be submitted with the HTC application.

1. Owner narrative summary supporting the proposed maintenance and operating number included in the application.
2. Copies of year-end operating information from three comparable developments that have been in operation at least five years.
3. Name and phone number of local building inspector or housing official who can be contacted each comparable development and its physical condition.

The applicant should not assume this request will be automatically approved. If no supporting data is provided, the minimum underwriting standards and benchmarks will be used. The MHFA also reserves the right to reject or adjust the maintenance and operating numbers based upon the information supplied, specific development type, circumstances and/or significant changes to the economics of the development's current marketplace.

## **H. Scoring**

Upon satisfactory completion of Project Selection A through G, in this section, an application may then be ranked in accordance with the Selection Priorities and Preference Points (Attachment 1, Exhibit A).

## **I. Tie Breakers**

If two or more proposals have an equal number of points, the following will be used to determine selection:

1. First tie breaker will be the total number of points in preference priority criteria; if a tie still remains;
2. Second tie breaker, priority will be given to a project located in a city that has not received tax credits in the last two years; if a tie still remains;
3. Third tie breaker, priority will be given to a project with the lowest percentage of intermediary costs; if a tie still remains;
4. Fourth tie breaker will be by lot.

## VIII. SUBMISSION REQUIREMENTS

It is the applicant's responsibility to be aware of the submission requirements needed to proceed to the next step in obtaining an allocation. If the applicant is unable to meet the submission requirements (financing, zoning, site control, syndication, construction start, etc.) in a timely manner, or if approvals have expired, the application will no longer be processed and the application fee will be forfeited.

**Required Documents/Attachments:** It is very important that the applicant follow the order of the Required Documents/Attachments below. The submissions should be separated by index tabs with corresponding numbers. DO NOT submit applications in three ring binders or with plastic casing around the pages. Submissions should be bound only by staples, binder clips, or rubber bands.

If applying for MHFA housing tax credits, first mortgage and/or deferred loans, submit the original and three (3) copies of the completed application form and all required attachments.

In some cases the submissions and forms outlined in the HTC Procedural Manual may be identical to the submissions and forms described in the Multifamily Application Packet. These submissions and forms do not need to be duplicated. Where applicable, the completed document should be placed to its appropriate tab location within the Multifamily Application Packet. If applicable, the corresponding tab location within the tax credit submissions should be clearly "cross-referenced" to the Multifamily Application Packet.

The preferred application method is electronic.

The Application for Tax Credits must be signed by one general partner (and the nonprofit partner if appropriate), officer, director or corporate officer stating that under penalties of perjury, all facts and statements contained in the application and all documents and attachments submitted are true to the best of their knowledge.

**Any submissions not meeting the directions above will be returned to the applicant.**

At a minimum, the following documents and attachments are required to proceed toward allocation at each stage of the process:

### A. Application Requirements

1. For Round 1, provide evidence of meeting one of the threshold types defined in Article 6.2 of the attached QAP.
2. A check for the appropriate application fee (See Section X).
3. Market Qualification Information Form, Attachment 2 (See also Section VII.B).
4. Maintenance and Operating Expense Review and Underwriting Certification, Attachment 25 (HTC 29) (See Section VII.F).
5. Completed Multifamily Form (HTC/RFP 1) Application for Tax Credits signed by at least one general partner involved in this project and the nonprofit corporation where a nonprofit set aside is requested. Also submit a completed project schedule Multifamily Application HTC/RFP Form C3. An incomplete Multifamily Application Form (HTC/RFP 1) will not be accepted and will be returned to the applicant.

6. Original photographs of exterior and interior of building, if existing, or site and surrounding areas, if new construction.
7. Evidence of Site Control (evidence of title or adequate site control) must be submitted with the application. Acceptable evidence includes the following: warranty deed, contract for deed, purchase commitment, option, or letter of intent from governmental body for sole developer, etc. The evidence of site control must be current, fully executed and extend to anticipated date of carryover allocation, placed in service or provide provisions for extension. For allocation, an attorney's opinion that the applicant has ownership of the property will be required in accordance with Section 42.

Owners should be cautioned that tax credit reservations are site specific and the entire described property is subject to the terms and covenants of the MHFA Declaration of Land Use Restrictive Covenants for Housing Credits.

Loss of site control will result in cancellation of Reservation or Carryover allocation.

MHFA will not accept applications from different applicants for the same site.

8. Legal description of land (not property Tax ID Number) on separate 8 ½ by 11 sheet of paper or labeled "Exhibit A".
9. Proposed sources of funds. Provide a current form of documentation of proposed sources of funds including; letter of intent, commitment, etc.; stating all terms and conditions (including dollar amount, number of years, interest rate, debt service coverage, etc.). In the case of below market rate financing, the applicant must secure a firm financing commitment signed by both the applicant and the lender. The value of the donations and in-kind contributions assistance must be consistent with current market comparable costs for materials and services. Within 90 days of selection, the applicant must provide MHFA with a firm schedule containing specific benchmark dates and actions for the finalization of securing the assistance.
  - a. Construction financing;
  - b. Permanent financing – (for RD Projects AD622 and letter of conditions);
  - c. Secondary financing;
  - d. Grants – letter from granting authority
  - e. Syndication proceeds; and
  - f. Other sources of funds, including any federal, state, local and private subsidies.
10. Development Team Information Form and a one-page synopsis of each team member's related experience, Attachment 14 (HTC 19).
11. Previous Participation (RFP Form C1) and Authorization of Release of Information (two parts), Attachment 13 (HTC 17).
12. Agreement to Utilize Public Housing and Section 8 Waiting Lists, Attachment 11 (HTC 11), Section 42(m)(1)(C) requires the MHFA to consider the applicant's ability to utilize the local public housing authority's waiting list when filling vacant tax credit units. Complete in full.
13. A 15-year after tax cash flow proforma (for five or more units).

14. If nonprofit proof of status (IRS approval must be included for nonprofit organizations). (See Section IV.C. for more details.)
  - a. A description of the nonprofit's intended participation in the development and operation of the project.
  - b. Articles of Incorporation.
  - c. Internal Revenue Service (IRS) documentation of status. A nonprofit must have IRS 501(c)(3) or (4) approval from the IRS or expect to receive such designation prior to carryover allocation and meet requirements of Internal Revenue Code (42(h)(5).
15. Notification of Local Official and Suballocator, Attachment 12 (HTC 18 or RFP Form C2). The MHFA will ask the local official or suballocator for comments regarding any project that falls within their jurisdiction.
16. Completed Original Self Scoring Worksheet for Selection Points signed by at least one general partner, Attachment 1, Exhibit A (HTC 10).
17. Evidence of Special Services. To obtain points under Section Priority 5, legal evidence of special services must be provided to MHFA before a reservation of credit is granted. (Compete RFP Forms D and D1 when applicable.)
18. Location Map. A legible map including major roads, cross streets and clear directions to the site must be provided. A complete city map will be required for projects outside the seven county metro area. Site maps must identify the location of:
  - Housing comparables
  - Hospitals
  - Library
  - Grocery stores
  - Drug Stores
  - Churches
  - Elementary, Secondary and High Schools
  - Health Clinics
  - Banks
  - Post Office
  - Clothing Stores
  - Day Care Centers
  - Special Services

Do not use zoning maps for location maps.

19. Documentation for current utility allowance from PHA/HRA or local utility company. Include a breakdown of the utilities that a tenant pays directly and the actual charge of each type of utility for the various unit types (one bedroom, two bedroom, etc.) and housing types (apartments, townhomes, etc.). Also, include a list of each unit type, total al tenant paid utilities, contract rent, and gross rent.
20. Design development quality scaleable presentation drawings (one set of construction documents, if available) containing at a minimum a site plan, elevations, unit plans, building plans, building section, and building materials certification (see Attachment 3, HTC Design Standards).
21. For applications chosen involving acquisition and rehabilitation of existing building/s.
  - a. A scope of work must be submitted for each building. Housing credit properties must provide a minimum of 15 years, and often 30 years or more of affordable

housing use. A capital needs assessment represents a qualified professional's opinion of a property's current overall physical condition and identifies significant deferred maintenance, existing deficiencies, and material building code violations that affect the property's use and its structural and mechanical integrity. Selected applicants receiving tax credits for rehabilitation are strongly encouraged to get a capital needs assessment by a competent third party, such as a licensed architect or engineer. The assessment should include a site visit and physical inspection of the interior and exterior of units and structures, as well as an interview with available on-site property management and maintenance personnel to inquire about past repairs/improvements, pending repairs, and existing or chronic physical deficiencies. The assessment should also consider the presence of hazardous materials on site.

- b. If existing below market loans or rental subsidies are involved in the acquisition, provide evidence of the source of funds, including the original and outstanding amount, terms and conditions.
  - c. Relocation Plan, if applicable.
  - d. Evidence that each building complies with the 10-year rule in 42(d).
22. Such documents and instruments as are necessary and as may be required by MHFA.

## **B. Carryover Requirements**

Several changes to Section 42 of the Internal Revenue Code were included in legislation passed by Congress in December 2000 as part of the Community Renewal Tax Relief Act of 2000. These amendments made certain changes to the Carryover Allocation requirements. **However, no guidance has been issued by the IRS regarding these changes. The MHFA 2002 Housing Tax Credit carryover procedures will have to be modified further to conform with the new laws when sufficient guidance has been received from the IRS. The final carryover procedures are expected to be included in the carryover package mailed to owners of selected developments later this year.**

In addition to meeting requirements of federal law, the applicant of a selected project must provide no later than 4:30 p.m., **November 1 or the next calendar business day** of the year in which the reservation was issued, a complete carryover package in final form containing all the required documents in a form satisfactory to MHFA. Late fees will be enforced (See Section X).

1. An updated Multifamily Application Form (RFP/HTC 1) for Tax Credits. The updated application must be signed by at least one general partners involved in this project and the nonprofit partner, if applicable. All changes from initialed application must be highlighted and each changed page must be dated and initialed. For material changes, refer to Section IV.F.3.

Incomplete revisions or those not highlighted, initialed and dated are not acceptable and will be returned to the applicant.

### 2. An Updated Project Schedule. Multifamily Application Form RFP/HTC C3.

3. A complete, signed and notarized Owner Certification/Application for Carryover Allocation on an approved MHFA Form (HTC 4).

4. Building information on an approved MHFA Form (HTC 5).
5. An Attorney's Opinion Letter in an approved MHFA Form (supplied with Carryover Package) verifying:
  - a. The legal designation and Tax Identification Number (TIN) of the ownership entity that will receive the tax credits, the legal designation of the party that signed the application, and the names and TIN numbers of the general or managing partners.
  - b. The attached legal description (to be labeled Exhibit A) of the property is correct and identical to the property selected at application/reservation.
  - c. The developer is the owner for tax purposes, or evidencing continued site control of the land and depreciable real property identified at application/reservation as the project.
6. A written Certified Public Accountant's Certification (HTC 6) in an approved MHFA Form (supplied in Carryover Package) verifying:
  - a. The amount of the reasonably expected basis, the carryover basis, and the percent of the expenses incurred.
  - b. More than 10 percent of the reasonably expected basis on the project must be expended by the later of the date which is six months after the date that the allocation is made or the close of the calendar year in which the allocation is made. **The MHFA 2002 Housing Tax Credit carryover procedures will have to be modified further to conform with the new laws when sufficient guidance has been received from the IRS. If the final carryover basis and expenditures information is not available at the time the carryover application is due, the application must include written CPA estimates of this information. Final CPA certifications of this information must be submitted to MHFA prior to the deadlines established by Section 42. The final carryover procedures are expected to be included in the carryover package mailed to owners of selected developments later this year.**
  - c. Also include a statement of non-affiliation with the developer and/or owner.
7. Identification of the sources of construction, interim and permanent financing arrangements. Provide a firm letter commitment in the form of a binding agreement as required in Minnesota Section 513.33. The agreement must:
  - a. Be in writing;
  - b. Specify the consideration for the transaction and pertinent terms;
  - c. Be signed by both the lender and the borrower (for RD Projects, Form 1994-51); and
  - d. Be current and state the effective and expiration date.

8. Maintenance and Operating Expense Review and Underwriting Certification, (Attachment 25, HTC 29) (See Section VII.F) (Two Copies).
9. A description of any governmental assistance and/or rental assistance. This includes copies of any contracts/agreements executed or any applications made for rental assistance for the project.
10. If choosing to make the election at this time, supply a fully executed Statement of Election of Gross Rent Floor (Attachment 24, HTC 26) for each building of the development in which there are housing tax credit units. If these required forms are not submitted to MHFA prior to the in-service date, in fully executed condition, with all elections made by the owner, the gross rent floor will be determined to have been elected as the gross rent effective on the allocation date of the tax credits.
11. It is the policy of the Minnesota Housing Finance Agency to take affirmative action to provide equal opportunity in all of our endeavors. Complete, execute and return the following forms:
  - a. Affirmative Fair Housing Marketing Plan describing the marketing strategies that an owner will use, including, but not limited to special efforts the owner will make to attract persons who are lease likely to apply in addition to a broad cross section of the local population without regard to religion, sex, national origin or status as a recipient of public assistance.
  - b. A tenant selection plan describing the tenant selection policy that an owner will use, including, but not limited to establishment of procedures which (1) promote maximum utilization of units and sets minimum standard of no fewer than two persons per bedrooms; (2) where two equally qualified households apply for a unit, preference shall be given to the larger household; and (3) support and implement the cooperatively developed housing plan between the owner and the local housing authority.
  - c. Equal Employment Opportunity Policy Statement.
12. A fully executed Development Team Information Form (Attachment 14, HTC 19) and written disclosure as to any and all Identity of Interest parties (See Section IV H & I).
13. The Allocation Fee, based on the annual tax credit reservation amount (See Section X) (Additional fees for additional credits secured at carryover will be collected following the award).

### **C. Placed in Service**

Generally, the placed in service date for HTC purposes, for a newly constructed building or for rehabilitation expenditures in an existing building, is the date when the first unit in the building is certified as available for occupancy. The placed in service date must occur for all buildings within a project within two years after the allocation year of tax credits.

MHFA will issue the IRS Form 8609 within 30 days when all the following items have been received by the Agency in a satisfactory form and substance. Issuance of IRS Form 8609 and subsequent submission of the original to the IRS is to be done only by MHFA or, as applicable, its designated Suballocators Form 8609 shall not be created nor the original filed



with the IRS by any other entity. (Also refer to Section IV.F. Unacceptable Practices.) A condition to this effect will be added to the Carryover Agreement.

1. A transmittal letter indicating the project name, address and MHFA assigned number. The letter should request the issuance of IRS Form 8609 and list the following required documents. In the letter, please list the revised information and explain the basis for the changes. The letter must be dated and signed by the owner or authorized individual.
2. Evidence that all buildings have been Placed in Service. Submit a copy of the Certificate of Occupancy provided by the local governmental authority having jurisdiction for each building. If not available from the local government, a Certificate of Substantial Completion prepared by the architect will be accepted. For acquisition and rehabilitation, the developer must provide supporting documentation for the elected date.
3. A copy of the current utility allowance schedule including a breakdown of the utilities that a tenant pays directly and the actual charge of each type of utility for the various unit types (one bedroom, two bedroom, etc.) and housing types (apartment, townhomes, etc.). Also, include a list of each unit type, total of tenant paid utilities, contract rent, and gross rent.
4. A CPA's Audit report and cost certification based upon an audit of the owners schedule of total project costs, (Attachment 21, HTC 9).

All costs of projects owned by all entities for five or more units must be cost certified by a CPA when construction has been completed and before MHFA can complete its final evaluation.

Projects with four or less units must submit a sworn construction statement and/or certification by owner, as appropriate.

5. An updated Multifamily application form (HTC/RFP 1) signed by at least one general partner involved in this project and nonprofit partner, if appropriate. Highlight all changes from carryover application, re-date and initial the revised pages. For material changes, refer to Section IV.F.3. Incomplete revisions or those not highlighted, initialed and dated are not acceptable and will be returned to the developer. In particular, check to ensure that changes in number of units, rents, utility allowance, source of funds (loans, grants, etc.), hard and soft cost changes and qualified basis are updated on the revised application pages.
6. An Attorney's Opinion Letter verifying the taxpayer is:
  - a. The attached legal description (to be labeled Exhibit A) of the property is correct and identical to the property selected at application/reservation.
  - b. The legal designation of the ownership entity that will receive the tax credits. (The opinion should include that the business is in good standing and duly authorized in Minnesota.).
  - c. The name, legal designation, and Tax Identification Number (TIN) of all the general partner(s), the contact person and the required authorized signatories. If the partners are an organized entity, such as a limited liability corporation, a

limited liability partnership, or an organized partnership, provide the above information for each.

- d. Identification and copies of any waivers required by Section 42 obtained from the IRS.
7. A signed and dated statement documenting the amount and disposition of Reserved, Contingencies, and any cash savings. If any of the above revert back to developer/owner, general partner or any ownership interest, the MHFA will consider then deferred developer fees, and for purposes of tax credit allocation, restrict the developer fees as specified in this Procedural Manual.
8. A copy of the unrecorded MHFA Declaration of Land Use Restrictive Covenants for Housing Credits. The Declaration must be completed and recorded before the end of the first credit period to preserve the tax credits allocated to the project. Check with your tax advisor as to timing of filing and claiming of credits.
9. Documentation of the final amount of tax credit proceeds or receipts generated. Provide a copy of the final Syndication, Private Placement, or Individual Investment Agreements disclosing terms and conditions.
10. Original Certification of Owner/Application for Issuance IRS Form 8609, (Attachment 22, HTC 3) verifying:
  - a. The placed in service date as defined in IRS Notice 88-116 for each building and/or type of tax credit. Month and year should correspond with occupancy certificate. If the month and year do not correspond, submit a written statement indicating the reason.
  - b. Compliance with all applicable design requirements; and
  - c. Compliance with all requirements of selection, and additional or special conditions of reservation, commitment or carryover.
11. Copies of final loan or grant documents for all sources of funds (mortgage and note) that support the amount, terms and conditions stated on the Multifamily Application Form (RFP/HTC 1).
12. Maintenance and Operating Expenses Standards and Certification, (Attachment 25, HTC 29) (See Section VII.E).
13. A 15-year after-tax cash flow pro forma (for five or more units).
14. Such documents and instruments as are necessary and as may be required by MHFA.
15. If ownership entity has changed, a copy of assignment, a revised Transfer Agreement (Attachment 23, HTC 20) and Notice of Intent to Transfer Ownership Agreement or Change in Owner Name or Status (Attachment 23, HTC 27) updated resumes of new project team members (Attachment 14, HTC 19), and Previous Participation/Authorization for Release of Information (Attachment 13, HTC 17) (See Section IV.F.1.), and the Transfer of Ownership Fee (See Section X).
16. A copy of the executed final Partnership Agreement.

17. Original photographs of completed building(s).
18. A completed Building Map (Attachment 20, HTC 28) with a current rent roll attached.
19. A fully executed Development Team Information Form, (Attachment 14, HTC 19), and written disclosure as to any and all Identity of Interest parties (see Section IV.H and I).
20. It is the policy of the Minnesota Housing Finance Agency to take affirmative action to provide equal opportunity in all of our endeavors. Complete, execute and return the following forms:
  - a. Affirmative Fair Housing Marketing Plan describing the marketing strategies that an owner will use, including, but not limited to special efforts the owner will make to attract persons who are least likely to apply in addition to a broad cross section of the local population without regard to religion, sex, national origin or status as a recipient of public assistance.
  - b. A tenant selection plan describing the tenant selection policy that an owner will use, including, but not limited to: establishment of procedures which (1) promote maximum utilization of units and set minimum standards of no fewer than two persons per bedroom; (2) where two equally qualified households apply for a unit, preference shall be given to the larger household; and (3) support and implement the cooperatively developed housing plan between the owner and local housing authority.
  - c. Equal Employment Opportunity Policy Statement
21. Non-refundable Allocation Fee equal to 3 percent of the annual tax credit amount if not already paid at carryover. (See Section X)

## **IX. TAX EXEMPT PROJECTS SEEKING TAX CREDITS (NEW SECTION)**

### **A. General**

Section 42 of the Internal Revenue Code establishes a separate set of procedures to obtain housing tax credits through the issuance of tax-exempt bonds. Although the tax credits are not counted in the tax credit volume cap for the State of Minnesota, developers of projects should be aware of the information contained in Section 9 of the State of Minnesota Housing Tax Credit Qualified Allocation Plan (Attachment 1 to this Procedural Manual).

### **B. Application for Issuance of Preliminary Determination Letter**

Prior to Bond issuance, the developer must submit to MHFA a full and complete application for issuance of a Preliminary Determination letter. The developer must submit to MHFA all documents required for an application for tax credits under Section VIII of the Housing Tax Credit Program Procedural Manual and any additional information requested by MHFA. For projects for which the MHFA is the allocating agency, the developer must submit a review fee equal to three percent (3%) of the requested annual tax credit amount. In addition, if the issuer of the bonds is not the MHFA the initial submission must include a preliminary determination by the issuer of the bonds addressing the tax credit dollar amount and project costs pursuant to Section 42(m)(2)(D) of the Internal Revenue Code [see Attachment 1 to this Procedural Manual]. Based upon the submission of documents MHFA will issue a letter with its preliminary determination as to whether the project satisfies the requirements for allocation of a housing credit dollar amount under the Qualified Allocation plan. This process may take six weeks or more from the time the full application package is submitted. All applicants should develop their timelines and schedules accordingly.

### **C. Election of Applicable Percentage**

Section 42 of the Internal Revenue Code requires that the Owner elect the applicable percentage for the project. The election is made at the time the tax exempt obligations are issued to fix the percentage for the month in which the building is placed in service or the month in which the tax-exempt obligations are issued. If the election is not made at the time the tax exempt obligations are issued, the percentage will be fixed for the month in which the building is placed in service. The Owner must be sure to consider the best options for this election and make sure the election is made at the correct time. Once made, the election is irrevocable.

### **D. Requests for Building Identification Numbers (BIN)**

At the time of application for issuance of a Preliminary Determination letter, the applicant must obtain Building Identification Numbers (BIN) for each of the proposed buildings in the development. MHFA will assign all BIN numbers. An address or other specific legal description is needed for each BIN number to be identified with. The address and BIN numbers will be needed as part of an application for Form 8609.

### **E. Election of Gross Rent Floor**

The Owner/Taxpayer of a qualified tax credit project financed with tax exempt bonds is permitted under IRS Revenue Procedure 94-57 to fix the date of the gross rent floor to be the date on which MHFA initially issues its Preliminary Determination letter to the building or the Placed in Service date (refer to Attachment 24 of the HTC Procedural Manual). The election of one of the two timing options must be completed and the election form(s)

received by MHFA prior to the date the project is placed in service. If no election is made and/or no form(s) received by MHFA prior to the date the project is placed in service, then the gross rent floor date will automatically be fixed by MHFA to be the initial issuance date of the Preliminary Determination letter for the building.

#### **F. Application for Issuance of Form 8609**

Subsequent to the project being placed in service and prior to a Form 8609 being issued for the project by MHFA, the Owner must submit an application for the issuance of Form 8609 to MHFA. The application must contain those items as identified in Section G below titled Tax Exempt Placed In Service. For projects for which the MHFA is the allocating agency, the developer must submit an 8609 fee equal to three percent (3%) of the requested annual tax credit amount.

#### **G. Tax Exempt Placed in Service**

Placed in service dates for HTC purposes must be established for all buildings using credits including acquisition credits (which are treated as a separate building for tax credit purposes). Generally, the placed in service date for a newly constructed building or for rehabilitation expenditures in an existing building, is the date when the first unit in the building is certified as available for occupancy. The placed in service date for acquisition credits is generally the date of the acquisition of the building. Except for buildings eligible to receive tax credits outside the state cap by virtue of the issuance of tax exempt financing, the placed in service date for all buildings of a credit project must occur within two years after the allocation year of the tax credits. \*

MHFA will issue the IRS Form 8609 on a tax exempt project within 30 days when all the following items have been received by the Agency in a complete and satisfactory form and substance. Issuance of IRS Form 8609 and subsequent submission of the original to the IRS is to be done only by MHFA or, as applicable, its designated Suballocators. Form 8609 shall not be created nor the original filed with the IRS by any other entity. (Also refer to Section IV.F. Unacceptable Practices.).

1. A transmittal letter indicating the project name, address and MHFA assigned number. The letter should request the issuance of IRS Form 8609 and list the following required documents. In the letter, please list the revised information and explain the basis for the changes. The letter must be dated and signed by the owner or authorized individual.
2. Evidence that all buildings have been Placed in Service. Submit a copy of the Certificate of Occupancy provided by the local governmental authority having jurisdiction for each building. If not available from the local government, a Certificate of Substantial Completion prepared by the architect will be accepted. For acquisition and rehabilitation, the developer must provide supporting documentation for the elected date.
3. Evidence from the issuer of the bonds that the bonds received an allocation of tax-exempt volume cap from the State of Minnesota.
4. A copy of the current utility allowance schedule (from the housing authority or utility company) including a breakdown of the utilities that a tenant pays directly and the actual charge of each type of utility for the various unit types (one bedroom, two

bedroom, etc.) and housing types (apartment, townhomes, etc.). Also, include a list of each unit type, total of tenant paid utilities, contract rent, and gross rent.

5. A CPA's Audit report and cost certification based upon an audit of the owners schedule of total project costs, (Attachment 21, HTC 9)

All costs of projects owned by all entities for five or more units must be cost certified by a CPA when construction has been completed and before MHFA can complete its final evaluation.

Projects with four or less units must submit a sworn construction statement and/or certification by owner, as appropriate.

6. An updated HTC application signed by at least one general partner involved in this project and nonprofit partner, if appropriate. Highlight all changes from Preliminary Determination Application, re-date and initial the revised pages. For material changes, refer to Section IV.F.3. Incomplete revisions or those not highlighted, initialed and dated are not acceptable and will be returned to the developer. In particular, check to ensure that changes in number of units, rents, utility allowance, source of funds (loans, grants, etc.), hard and soft cost changes and qualified basis are updated on the revised application pages.
7. Evidence that the governmental unit which issued the bonds (or on behalf of which the bonds were issued) made a determination that the amount of credits allocated to the project do not exceed the amount necessary to assure project feasibility pursuant to Section 42(m)(2)(A) and (B), including a copy of the final written determination (and the analysis on which it was based) that the credits allocated to the building did not exceed the maximum tax credit based upon the lesser of the eligible basis or the amount necessary to achieve financial feasibility. The issuer analysis and determination must address all of the items set forth in Section 42(m)(2)(B). The determination must be based upon the list of the submission requirements described in Section VIII.C. of the manual including at a minimum items 5, 6, 9, 11, 13, 15 and 18.
8. An Attorney's Opinion Letter/Opinion of Council verifying:
  - a. The legal description of the property (to be labeled as Exhibit A and attached to the opinion) is correct and identical to the property identified in the application for Preliminary Determination.
  - b. The taxpayer is the owner of the property that is to be part of the project and which is described in Exhibit A of the opinion.
  - c. The legal designation and Tax Identification Number (TIN) of the ownership entity that will receive the tax credits. (The opinion should include that the business is in good standing and duly authorized in Minnesota.)
  - d. The name, legal designation, and Tax Identification Number (TIN) of all the general partner(s), managing partner(s), contact person(s) and the required authorized signatories. If the partners are an organized entity, such as a limited liability corporation, a limited liability partnership, or an organized partnership, provide the above information for each.

- e. Identification and copies of any waivers required by Section 42 obtained from the IRS.
  - f. The buildings qualify for an allocation of credits under Section 42(h)(4) and that the legal description of the property financed with the tax exempt bonds is identical to the legal description of the property subject to the Extended Use Agreement (Declaration of Land Use Restrictive Covenants).
9. A signed and dated statement documenting the amount and disposition of Reserved, Contingencies, and any cash savings. If any of the above revert back to developer/owner, general partner or any ownership interest, the MHFA will consider then deferred developer fees, and for purposes of tax credit allocation, restrict the developer fees as specified in this Procedural Manual.
10. A copy of the unrecorded MHFA Declaration of Land Use Restrictive Covenants for Housing Credits.
- (NOTE: A copy of a properly recorded Declaration, in final form and content as approved by MHFA following its review, must be provided to MHFA prior to the release of any 8609's to the Owner).
- (NOTE: A Declaration must be completed and recorded before the end of the first credit period to preserve the tax credits allocated to the project. Check with your tax advisor as to timing of filing and claiming of credits).
11. Documentation of the final amount of tax credit proceeds or receipts generated. Provide a copy of the final Syndication, Private Placement, or Individual Investment Agreements disclosing terms and conditions.
12. Original Certification of Owner/Application for Issuance IRS Form 8609, (Attachment 22, HTC 3) verifying:
- a. The placed in service date as defined in IRS Notice 88-116 for each building and/or type of tax credit. Month and year should correspond with occupancy certificate. If the month and year do not correspond, submit a written statement indicating the reason. ✱
  - b. Compliance with all applicable design requirements; and
  - c. Compliance with all requirements of the Preliminary Determination letter issued by MHFA on the project and the requirements of Section 9 of the State of Minnesota Housing Tax Credit Qualified Allocation Plan.
13. Copies of final loan or grant documents for all sources of funds (mortgage and note) that support the amount, terms and conditions stated on the HTC Application.
14. Maintenance and Operating Expenses Standards and Certification, (Attachment 25, HTC 29) (See Section VII.E).
15. A 15-year after-tax cash flow proforma (for five or more units) signed by the lending institution or source of credit enhancement, if any, signifying that they are aware of the figures presented on the HTC application.

16. Such documents and instruments as are necessary and as may be required by MHFA.
17. If ownership entity has changed, a copy of assignment, a revised Transfer Agreement (Attachment 23, HTC 20) and Notice of Intent to Transfer Ownership Agreement or Change in Owner Name or Status (Attachment 23, HTC 27) updated information of new project team members (Attachment 14, HTC 19), and Previous Participation/Authorization for Release of Information (Attachment 13, HTC 17) (See Section IV.F.1.), and the Transfer of Ownership Fee (See Section X).
18. A copy of the executed final Partnership Agreement.
19. Original photographs of completed building(s).
20. A completed Building Map (Attachment 20, HTC 28) with a current rent roll attached.
21. A fully executed Development Team Resume, (Attachment 14, HTC 19), and written disclosure as to any and all Identity of Interest parties (see Section IV.H and I).
22. It is the policy of the Minnesota Housing Finance Agency to take affirmative action to provide equal opportunity in all of our endeavors. Complete, execute and return the following forms:
  - a. Affirmative Fair Housing Marketing Plan describing the marketing strategies that an owner will use, including, but not limited to special efforts the owner will make to attract persons who are least likely to apply in addition to a broad cross section of the local population without regard to religion, sex, national origin or status as a recipient of public assistance.
  - b. A tenant selection plan describing the tenant selection policy that an owner will use, including, but not limited to: establishment of procedures which (1) promote maximum utilization of units and set minimum standards of no fewer than two persons per bedroom; (2) were two equally qualified households apply for a unit, preference shall be given to the larger household; and (3) (pursuant to points awarded on the project's scoring worksheet) support and implement the cooperatively developed housing plan between the owner and local housing authority.
  - c. Equal Employment Opportunity Policy Statement
23. Non-refundable 8609 Fee equal to 3% of the annual tax credit amount. (See Section X)

<p><b>* It is highly recommended that Owners/Developers of tax exempt projects seek the appropriate legal and bond professional advise on these matters.</b></p>
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## **X. FEES**

### **A. Application Fee:**

An application fee must be submitted with the application. The fee is non-refundable and is the greater of \$700 or \$30 times the total units, with a maximum of \$2,000 for for-profit development entities. Nonprofits will be charged an application fee of \$700 that is also non-refundable. The nonprofit cannot be affiliated with or controlled by a for-profit individual or organization as determined by MHFA. For multi-building projects, MHFA will require only one application and a single fee.

### **B. Supplement Fee:**

The supplement fee is \$350.00. This fee will be charged to projects that resubmit their proposals in Round 2 of the allocation year and were underwritten by MHFA in Round 1.

1. The non-selected project will be required to submit a new application package as described in Section IV.L.
2. A selected project (must have been selected in the same year) requesting additional credits will be required to submit a new application package as described in Section IV.K.

### **C. Reservation Fee:**

After the project has been selected, a reservation fee of 3 percent of the allocation must be paid to the MHFA. The developer will have 30 days in which to pay the reservation fee and maintain their tax credit allocation. This fee is non-refundable and will not be adjusted if the final tax credit amount is reduced or the tax credits are returned or unused.

### **D. Allocation Fee:**

At the time the building is placed in service or has been issued a carryover allocation. An allocation fee will be due which is equal to 3 percent of the annual tax credit amount reserved by MHFA. This fee is non-refundable and will not be adjusted if the final tax credit amount is reduced or the tax credits are returned or unused.

### **E. Allocation Late Fee:**

Developers submitting a carryover package or an 8609 package prior to the end of the year of allocation for which the reservation was issued that:

1. Do not submit a carryover/8609 application by the established due date; or
2. Submit a substantially incomplete carryover/8609 application by the established due date;

Must pay a \$1,000 late fee plus a supplementary \$200 for each business day from the original due date through the date on which the MHFA receives the carryover/8609 application in a substantially complete form.

The fee will not be allowed as an eligible cost in carryover/8609 basis and must be paid at the time the carryover/8609 application is substantially complete.

**F. Tax Exempt Credit Review Fee**

A Review Fee must be submitted at the time of application to MHFA for issuance of a Preliminary Determination letter. For projects for which the MHFA is the allocating agency, the developer must submit a review fee equal to three percent (3%) of the requested annual tax credit amount. This fee is non-refundable.

**G. Tax Exempt Credit 8609 Fee**

An 8609 Fee must be submitted at the time of application to MHFA for Form 8609. For projects for which the MHFA is the allocating agency, the developer must submit an 8609 fee equal to three percent (3%) of the requested annual tax credit amount. This fee is non-refundable.

**H. Monitoring Fee:**

MHFA will charge an annual monitoring fee of \$25 per unit, based on the total number of units, with a minimum of \$50 except for projects covered by the memorandum of understanding (MOU) between MHFA and the U.S. Department of Agriculture, Rural Housing Service. The compliance monitoring fee will be \$15 per unit per year for projects covered by the MOU. This fee may be increased depending upon the requirements of the U.S. Treasury, IRS, or increased costs of MHFA. The fee will be due in a manner and time as prescribed by the Agency. Failure to pay the fee will result in MHFA notifying the IRS that the project is out of compliance.

**I. Transfer of Ownership Fee:**

A non-refundable transfer of ownership fee of \$2,500 must be submitted to the MHFA along with updated materials of the new owner/management team for each project in which 50% or more of the ownership entity is new since reservation or carryover allocation. Prior to 8609, changes in ownership must be approved by MHFA. See Section IV.F, Unacceptable Practices for further details on Transfer of Ownership.

**J. Check Cashing Procedure:**

Applicant's payments for fees (in the form of checks) will be held pending verification of the accuracy of the amount tendered and submitted materials.

## XI. ALLOCATION SCHEDULE OF CRITICAL DATES

<b><u>2002 Allocation Dates</u></b>		
<b>Public Hearing</b>	MHFA – 1 <sup>st</sup> floor – 400 Sibley St., St. Paul	May 8, 2001
<b>Request for Proposal</b>	.....	May 29, 2001
<b>2002 HTC Workshop</b>	Radisson South, Bloomington.....	June 7, 2001
<b>2002 Round 1</b>	Applications Due	July 19, 2001
	Selections Announced	October 26, 2001
	Reservation Materials and Fees Due	December 6, 2001
<b>2002 Round 2</b>	Application Due	February 7, 2002
	Selections Announced	April 25, 2002
	Reservation Materials and Fees Due	May 23, 2002
<b>2002 Carryovers Due</b>	Applications Due – Complete Carryover packages and appropriate fees must be enclosed	November 1, 2002
<b>2002 8609</b>	Applications Due – Complete 8609 packages for 2002 Allocations. Appropriate fees must be enclosed. When a Carryover Agreement is not executed, an IRS Form 8609 must be issued to the 2002 project before the end of the year to retain your tax credits.	November 1, 2002

<b><u>Previous Years Allocation of Credits</u></b>		
<b>Placed in Service Allocation</b>	Packages are due no later than 15 days after the last day of the first year of the credit period. Section 42 states the owner shall elect the first year of the credit period in the year the project is placed in service or the year following.	

**MINNESOTA HOUSING FINANCE AGENCY  
HOUSING TAX CREDIT PROGRAM**

**LIST OF ATTACHMENTS**

**Application Materials**

Attachment 1		MHFA Qualified Allocation Plan	
Attachment 1	Exhibit A	Self Scoring Worksheet	HTC 10
Attachment 2		Market Qualification Information	
Attachment 3		2001 HTC Design Standards	
Attachment 4		Qualified Census Tract	
Attachment 5		Project Location	
Attachment 7		IRS Notice 88-80 Determination of Income	
Attachment 8	Exhibit A	IRS Regulations 1.42-06 Carryover	
	Exhibit B	IRS Regulations 1.42-10 Utility Allowances	
	Exhibit C	IRS Regulations 1.42-17 Qualified Allocation Plan	
	Exhibit D	IRS Regulations 1.42-5 Monitoring Compliance	
	Exhibit E	Minnesota Statutes (1999) Section 462A.22 et Sequa	
Attachment 9		Section 42 Internal Revenue Code	
Attachment 10		Determination of Tax Credit	HTC 8
Attachment 11		Agreement to Utilize Public Housing & Section 8 Waiting Lists	HTC 11
Attachment 12		Notification of Local Official and Suballocator	HTC 18
Attachment 13		Previous Participation & Authorization for Release Of Information	HTC 17
Attachment 14		Development Team Information	HTC 19
Attachment 16		Rent & Income Limits	
Attachment 18		Rural Development Service Areas	
Attachment 19		Declaration of Land Use Restrictive Covenants	
	Exhibit A	Legal Description	
	Exhibit B	Applicable Fraction	
Attachment 20		Building Map	HTC 28
Attachment 21		Final Cost Certification	HTC 9
Attachment 22		Certification by Owner/Application for Issuance of IRS 8609	HTC 3
Attachment 23		Transfer Agreement	HTC 20
Attachment 23		Notice of Intent to Transfer Ownership	HTC 27
Attachment 24		Statement of Election of Gross Rent Floor	HTC 26
Attachment 25		Maintenance & Operating Expense Review & Underwriting Certification	HTC 29
Attachment 26		Threshold Letter	